

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
HERNAN ROBAYO and) Case No. 6:12-bk-08662-KSJ
GLORIA EDILMA BARRERO) Chapter 7
)
Debtors.)

)
TRUSTCO BANK,)
)
Plaintiff,) Adversary No. 6:12-ap-00118-KSJ
vs.)
)
HERNAN ROBAYO and)
GLORIA EDILMA BARRERO,)
)
Defendants.)

**MEMORANDUM OPINION GRANTING TRUSTCO'S MOTION FOR FINAL
ORDER DETERMINING THAT CLAIM AGAINST DEBTORS IS NON-DISCHARGEABLE**

The Plaintiff, Trustco Bank ("Trustco), holds a note and mortgage lien on the Debtors' former home located in Orlando, Florida.¹ The mortgage also encumbers all improvements, fixtures, and personal property attached to the home.² The Defendants agreed keep the Property and fixtures in good condition and to not remove or demolish any of the improvements or fixtures without Trustco's written permission.³

Prior to filing bankruptcy on June 26, 2012, the Defendants defaulted on their mortgage with Trustco, which then sold the property at a foreclosure sale. The Defendants

¹ Doc. No. 1.

² *Id.* at ¶ 5-7.

³ *Id.*

impermissibly and without consent of Trustco removed many of the fixtures attached to the home.

Trustco filed this adversary proceeding requesting that the Court find the Defendants liable for the resulting \$14,861 in damages caused by the removal of the fixtures.⁴ Trustco also requests that the Court find this debt to be non-dischargeable under 11 U.S.C. § 523(a)(6) because the Defendants' removal of the fixtures was a willful and malicious injury to Trustco's collateral.

Neither of the Defendants responded to Trustco's complaint, and, on November 13, 2012, the Clerk entered a default against the Defendants.⁵ Trustco then filed a motion for entry of final default judgment together with a related affidavit.⁶ Based on the Plaintiff's undisputed evidence, the Court finds that the Defendants willfully and maliciously removed fixtures and personal property from their home subject to Trustco's mortgage, that the Debtors are jointly and severally liable for \$14,861 in damages caused their actions, and that the debt is not dischargeable under 11 U.S.C. § 526(a)(6). The Court therefore will grant Plaintiff's Motion⁷. A separate Final Default Judgment shall be entered.

DONE AND ORDERED in Orlando, Florida, on January 23, 2013.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann", with a small "R.O." written above the "n".

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

⁴ Doc. No. 20. TrustCo. provided invoices totaling \$14,861 to fix the damaged fixtures and improvements.

⁵ Doc. Nos. 16 and 17.

⁶ Doc. Nos. 20 and 21.

⁷ Doc. No. 20.